


MEMORANDUM

September 10, 1999

TO: County Council

FROM:  Michael E. Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 26-99, Collective Bargaining - Amendments

Bill 26-99, Collective Bargaining – Amendments, sponsored by Councilmembers Subin and Silverman, is scheduled to be introduced September 14. A public hearing is tentatively scheduled for November 9 at 1:30 pm.

This bill requires arbitration of collective bargaining agreements for County government employees. The form of binding arbitration is last best offer for the entire economic package, and last best offer item-by-item for non-economic items. The arbitrator would decide which issues are economic or non-economic. Bill 26-99 also revises the process for certifying employee organizations and the timetable for certain collective bargaining actions.

This packet contains:

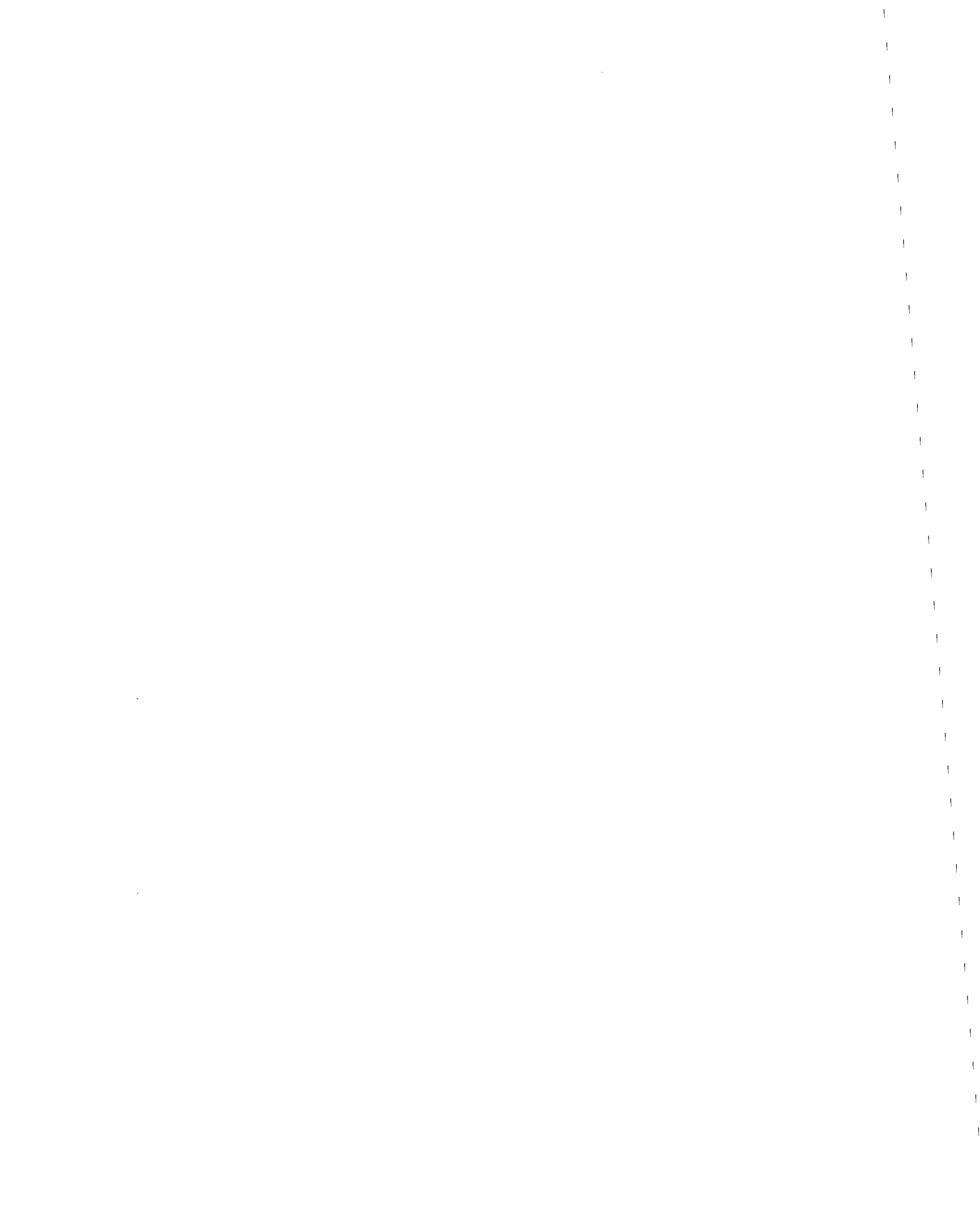
Bill 26-99

Legislative Request Report

Circle #

1

14



Bill No. 26-99
Concerning: Collective Bargaining -
Amendments
Revised: 9-8-99 Draft No. 2
Introduced: September 14, 1999
Expires: March 14, 2001
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Subin and Silverman

AN ACT to:

- (1) modify certain functions of the Labor Relations Administrator;
- (2) revise the process for certifying employee organizations;
- (3) revise the timetable for certain collective bargaining actions;
- (4) require binding arbitration of certain collective bargaining agreements; and
- (5) generally amend the law governing collective bargaining for certain County employees.

By amending

Montgomery County Code
Chapter 33, Personnel and Human Resources
Sections 33-103, 33-106, and 33-108

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

①

Sec. 1. Sections 33-103, 33-106, and 33-108 are amended as follows:

33-103. Labor Relations Administrator.

(a) [There is established the position of] A Labor Relations Administrator[, to provide for the effective implementation and administration of] must be appointed to effectively administer this Article [concerning] as it governs selection, certification and decertification procedures, prohibited practices, and the choice of a mediator/fact-finder. The [Labor Relations] Administrator [shall exercise the following powers and perform the following duties and functions] must:

* * *

(8) Determine any issue regarding the negotiability of any collective bargaining proposal.

~~[(8)]~~ (9) Exercise any other powers and perform any other duties and functions [as may be] specified in this Article.

33-106 Selection, certification, and decertification procedures.

(a) The certification or decertification of an employee organization as the representative of a unit for [the purpose of] collective bargaining [shall be initiated in accordance with] must comply with the following procedures:

* * *

(5) If a different employee organization is certified as the result of an election carried out under subsection (b)(8), that organization must be treated in all respects as a successor in interest and party to any collective bargaining agreement that the previous employee organization was a party to.

(b)

* * *

(8) If a properly supported and timely filed petition to decertify an existing certified employee organization, and a properly supported and timely filed petition to certify another employee organization, are filed during the same time period under subsection (a)(3) or (a)(4), one election must be held to determine which organization, if any, the employees in the unit desire to represent them. The election ballot must contain, as choices to be made by the voter, the names of the petitioning and certified employee organizations, and a choice that the employee does not desire to be represented by any of the named employee organizations. All other applicable requirements and procedures for the election must be followed.

* * *

41 **33-108. Bargaining, impasse, fact-finding, and legislative procedures.**

42 (a) Collective bargaining [shall] must begin no later than November 1
 43 before the beginning of a fiscal year for which there is no agreement
 44 between the employer and the certified representative, and [shall]
 45 must be finished on or before [January] February 15. [The resolution
 46 of a bargaining impasse or fact-finding shall be finished by February
 47 1.]

48 (b) Any provision for automatic renewal or extension of a collective
 49 bargaining agreement is void. An agreement is not valid if it extends
 50 for less than one year or for more than 3 years. All agreements
 51 [become effective] take effect July 1 and end June 30.

52 (c) A collective bargaining agreement [becomes effective] takes effect
 53 only after ratification by the employer and [by] the certified
 54 representative. The certified representative may [provide] adopt its
 55 own [rules for] ratification procedures.

56 (d) Before November 10 of any year in which the employer and the
 57 certified representative bargain collectively, the Labor Relations
 58 Administrator [shall] must appoint a mediator/[fact-finder] arbitrator,
 59 who may be a person recommended [to her] by both parties. The
 60 mediator/[fact-finder] arbitrator [shall] must be available [during the

period] from January 2 to [February 1] June 30. Fees and expenses of the mediator/[fact-finder] arbitrator [shall] must be shared equally by the employer and the certified representative.

- (e) (1) During the course of collective bargaining, either party may declare an impasse and request the services of the mediator/[fact-finder] arbitrator, or the parties may jointly request [his] those services before [declaration of] an impasse is declared. If the parties do not reach an agreement by [January] February 15, an impasse exists. Any issue regarding the negotiability of any bargaining proposal must be referred to the Labor Relations Administrator for an expedited determination.
- (2) This dispute [shall] must be submitted to the mediator/[fact-finder] arbitrator whenever an impasse has been reached, or [before that] as provided in subsection (e)(1). The mediator/[fact-finder] arbitrator [shall] must engage in mediation by bringing the parties together voluntarily under such favorable circumstances as will [tend to bring about the] encourage settlement of the dispute.

(3) If [and when] the mediator/[fact-finder] arbitrator finds, in [his] the mediator/arbitrator's sole discretion, that the parties are at a bona fide impasse, [he shall implement the following fact-finding process:] or as of February 15 when an impasse is automatically reached, whichever occurs earlier, the dispute must be submitted to binding arbitration.

[(a.) He shall require the parties to submit jointly a memorandum of all items previously agreed upon, and separate memoranda of their proposals on all items not previously agreed upon.]

(f)(1) If binding arbitration is invoked, the mediator/arbitrator must require each party to submit a final offer, which must consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the mediator/arbitrator directs. If only complete package proposals are required, the mediator/arbitrator must require the parties to submit jointly a memorandum of all items previously agreed on. The final offer submitted by each party must separately identify economic and non-economic proposals. Economic proposals must include salary and wages, pension and other welfare benefits, such as health insurance. The

100 mediator/arbitrator must decide any issue regarding whether a
101 particular proposal is economic or non-economic.

102 [(b.)] (2) [He] The mediator/arbitrator may require the parties to submit
103 oral or written evidence [or make oral or written] and
104 arguments in support of their proposals. [He] The
105 mediator/arbitrator may hold a hearing for this purpose at a
106 time, date, and place selected by [him] the mediator/arbitrator.
107 This hearing [shall] must not be open to the public.

108 [(c.)] (3) [On or before February 1, the mediator/fact-finder shall issue a
109 report of his findings of fact and recommendations on those
110 matters still in dispute between the parties. The report shall be
111 submitted to the parties but shall not be made public at this
112 time.]

113 On or before March 1, the mediator/arbitrator must select, as a
114 whole, the more reasonable of the final economic offers
115 submitted by the parties. With regard to the economic offers,
116 the mediator/arbitrator must not compromise or alter a final
117 offer. The mediator/arbitrator must not consider or receive any
118 argument or evidence related to the history of collective
119 bargaining in the immediate dispute, including any previous

120 settlement offer not contained in the final offers. However, the
 121 mediator/arbitrator must consider all previously agreed-on
 122 economic items, integrated with the disputed economic items,
 123 to decide which economic offer is the most reasonable. The
 124 mediator/arbitrator must also decide which of each of the
 125 parties' non-economic proposals is the most reasonable under
 126 all the circumstances. The mediator/arbitrator may
 127 compromise, alter, or reject any non-economic proposal.

128 [(d.)] (4) In making [findings of fact and recommendations] a
 129 determination under this subsection, the mediator/[fact-finder]
 130 arbitrator may [take into account] consider only the following
 131 factors:

132 [(i)] (A) Past collective bargaining agreements between the
 133 parties, including the past bargaining history that led to
 134 the agreements, or the pre-collective bargaining history
 135 of employee wages, hours, benefits, and working
 136 conditions.

137 [(ii)] (B) Comparison of wages, hours, benefits, and conditions of
 138 employment of similar employees of other public

139 employers in the Washington Metropolitan Area and in
140 Maryland.

141 [(iii)](C) Comparison of wages, hours, benefits, and conditions of
142 employment of other Montgomery County personnel.

143 [(iv)] (D) Wages, benefits, hours, and other working conditions of
144 similar employees of private employers in Montgomery
145 County.

146 [(v)] (E) The interest and welfare of the public.

147 [(vi)] (F) The ability of the employer to finance economic
148 adjustments, and the effect of the adjustments [upon] on
149 the normal standard of public services provided by the
150 employer.

151 (5) The economic offer selected by the mediator/arbitrator,
152 together with the mediator/arbitrator's conclusion on each non-
153 economic proposal, integrated with all previously agreed on
154 items, is the final agreement between the employer and the
155 certified representative, need not be ratified by any party, and
156 has the effect of a contract ratified by the parties under
157 subsection (c). The parties must execute the agreement, and
158 any provision which requires action in the County budget must

159 be included in the budget which the employer submits to the
160 County Council.

161 [(f) After receiving the report of the mediator/fact-finder, the parties shall
162 meet again to bargain. If 10 days after the parties receive the report
163 they have not reached full agreement, or if either party does not
164 accept, in whole or in part, the recommendations of the mediator-fact-
165 finder, the report of the mediator-fact-finder, with recommendations
166 on agreed items deleted, shall be made public by sending it to the
167 Council. The mediator/fact-finder shall also send the Council the
168 joint memorandum of items agreed upon, up-dated with any items
169 later agreed upon. The parties shall also send to the Council separate
170 memoranda stating their positions on matters still in dispute.]

171 (g) The budget that the employer submits to the Council [shall] must
172 include the items that have been agreed to, as well as the employer's
173 position on matters still in dispute. Any agreed or disputed term or
174 condition submitted to the Council that requires an appropriation of
175 funds, or the enactment[, repeal, or modification] or adoption of any
176 County law or regulation, or which has or may have a present or
177 future fiscal impact, may be accepted or rejected in whole or in part
178 by the Council. [Such terms or conditions shall be identified to the

Council by either or both parties.] The employer must expressly identify any term or condition that requires Council review. The employer [shall] must make a good faith effort to have the Council take action to implement [any term or condition to which the parties have agreed] all terms of the final agreement.

(h) The Council may hold a public hearing to enable the parties and the public to testify on the agreement [and the recommendations for resolving bargaining disputes].

(i) On or before May 1, the Council [shall] must indicate by resolution its intention to appropriate funds for or otherwise implement the [items that have been agreed to] agreement or its intention not to do so, and [shall] must state its reasons for any intent to reject any [items of the kind specified in subsection (g) that have been agreed to] item of the final agreement. [The Council shall also indicate by resolution its position on disputed matters which could require an appropriation of funds or enactment, repeal, or modification of any County law or regulation, or which have present or future fiscal impact.]

(j) [Then] If the Council indicates its intention to reject any item of the final agreement, the Council [shall] must designate a representative to

meet with the parties and present the Council's views in the parties' further negotiation on [disputed matters and/or agreed upon] matters that the Council has indicated its intention to reject. The parties must submit the results of the negotiation, whether a complete or a partial agreement, [shall be submitted] to the Council on or before May 10.

(k) Any agreement [shall] must provide for automatic reduction or elimination of wage [and/]or benefits adjustments if:

(1) The Council does not take action necessary to implement the agreement, or a part of it; or

(2) Sufficient funds are not appropriated for any fiscal year [in which] when the agreement is in effect.

[(k)] (l) The Council [shall] must take [whatever actions it considers] any action required by the public interest with respect to [matters] any matter still in dispute between the parties. However, [those actions shall not be] any action taken by the Council is not part of the agreement between the parties unless the parties specifically incorporate [them] it in the agreement.

Approved:

Isiah Leggett, President, County Council

Date

217 *Approved:*

218

Douglas M. Duncan, County Executive

Date

219 *This is a correct copy of Council action.*

220

Mary A. Edgar, CMC, Clerk of the Council

Date

\\Council-Fs2\CSTAFF\LAW\BILLS\99xx Binding Arb\99xxbil.Doc

LEGISLATIVE REQUEST REPORT

Bill 26-99

Collective Bargaining - Amendments

DESCRIPTION: Requires binding arbitration of collective bargaining agreements for County government employees. The form of binding arbitration is last best offer for the entire economic package, and last best offer item-by-item for non-economic items. The arbitrator would decide which issues are economic or non-economic. Also revises the process for certifying employee organizations and the timetable for certain collective bargaining actions.

PROBLEM: Need for other County government employees to have the same right to bargaining arbitration as County public safety employees now have.

GOALS AND OBJECTIVES: To make the collective bargaining process fairer to employees.

COORDINATION: Office of Human Resources, Office of Management and Budget

FISCAL IMPACT: To be requested.

ECONOMIC IMPACT: To be requested.

EVALUATION: To be requested.

EXPERIENCE ELSEWHERE: To be researched.

SOURCE OF INFORMATION: Michael Faden, Senior Legislative Attorney, 240-777-7905

APPLICATION WITHIN MUNICIPALITIES: Applies only to County government.

PENALTIES: None

14